

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF TEXAS  
3                   AUSTIN DIVISION

4     JOHN KELLEY AND MARY KELLEY    )  
5                                          )  
6     vs.                                )   CASE NO. 1:21-CV-00458-LY  
7                                          )  
8     CITY OF SAN MARCOS, JOHN        )  
9     DEHKORDI, ANDREW WISENER,        )  
10    BASIL PIERCE AND JOHN DOES    )

11                   ORAL VIDEOTAPED DEPOSITION

12                   SERGEANT KYE KENNEDY

13                   DECEMBER 20, 2022

14                   (Reported Remotely)

15                   ORAL VIDEOTAPED DEPOSITION OF SERGEANT KYE KENNEDY,  
16                   produced as a witness at the instance of the Plaintiff  
17                   and duly sworn, was taken in the above-styled and  
18                   numbered cause on DECEMBER 20, 2022, from 9:46 a.m. to  
19                   3:53 p.m., before Sarah A. Prugh, Certified Shorthand  
20                   Reporter in and for the State of Texas, reported by  
21                   machine shorthand with the witness located in Austin,  
22                   Texas, pursuant to the Federal Rules of Civil Procedure,  
23                   the current emergency orders regarding the COVID-19  
24                   State of Disaster or by agreement of counsel, and the  
25                   provisions stated on the record or attached hereto.

1                   THE WITNESS: I think there would still be  
2 a reason for the stop. Because again, we don't know why  
3 she is on the ground and that is one of the things that  
4 we need to be able to determine.

5                   Q. (By Mr. Puckett) Even though at that point, you  
6 haven't actually spoken to a victim; is that right?  
7 When I say you, I mean no one in the San Marcos Police  
8 Department has spoken to a victim.

9                   A. Correct.

10                  Q. The person who called in to 911 said they  
11 actually didn't see a violent act.

12                  A. Uh-huh.

13                  MR. SOLOMON: Objection, form.

14                  Q. (By Mr. Puckett) They caller to 911 doesn't  
15 know the reason there is a female on the ground. You  
16 would still say that under those circumstances, that  
17 there is reasonable suspicion that a crime has taken  
18 place?

19                  A. Not that a crime has taken place but enough to  
20 warrant stopping the other individual. I mean sure,  
21 that the offense didn't occur or that the offense did  
22 occur.

23                  Q. You think a prudent officer who was fully  
24 informed of those facts would think that the reasonable  
25 next step would be to locate a victim and actually

1 perfect opportunity for him to comply assuming, again,  
2 Officer -- without Officer Dehkordi knowing that he was  
3 deaf, he could have turned and said I am deaf. I can't  
4 hear what you are saying. I don't know what is going  
5 on.

6 Q. You just watched the video. Isn't that what  
7 John Kelley does when Officer Dehkordi grabs his wrist,  
8 John Kelley immediately puts his hands up next to his  
9 ears and you can almost see his mouth starting to say  
10 the words I am deaf when he gets tased. Isn't that what  
11 he is doing?

12 A. I don't know what he is doing. It appears to  
13 me that he is pulling his hands away from Dehkordi to  
14 prevent him from holding on to him.

15 Q. Let me ask you this question, sir. Go ahead.  
16 Finish your answer.

17 A. Because it seems to me if you look at -- and  
18 again, we have to review it again. When he is on the  
19 ground and he is pointing to his ears, it seems like he  
20 is using his index finger to point to his ear to  
21 indicate that he is deaf and not -- his hands up like  
22 this. He is actually pointing to his ears. And when he  
23 pulls away, it almost looks like he is pulling away to  
24 prevent the officers from holding on to him.

25 Q. Where were John Kelley's hands when Officers

1 Dehkordi and Pierce tased him?

2 A. I do believe they were like this.

3 Q. Hands up next to his head with open palms?

4 A. I believe so.

5 Q. When an officer tells you to put your hands up,  
6 isn't that what you are supposed to do?

7 A. Yes, sir.

8 Q. When a subject is in the hands up position,  
9 doesn't that indicate compliance?

10 A. If they are not in the process of pulling away  
11 from you, yes, sir.

12 Q. Do you remember the line that you agreed with  
13 just a moment ago, that when you haven't informed  
14 somebody that they are under arrest, that they may be  
15 legitimately surprised when you attempt to grab them and  
16 may pull away just out of surprise; right?

17 A. Yes, sir. Again, out of surprise that they  
18 don't know that you are there. I think Mr. Kelley was  
19 very clear, clearly knew that they were there and that  
20 they were officers with their overhead lights on, with  
21 their -- in their uniforms, that they were interested in  
22 him.

23 Q. So just because somebody is walking down the  
24 sidewalk, just because police officers show up, that  
25 person is supposed to immediately stop what they are

1 doing? Is that how criminal procedure works?

2 MR. SOLOMON: Objection, form.

3 THE WITNESS: Well, again, it depends on  
4 the way in which those officers arrived. And if they  
5 show up and you are the only person on the sidewalk,  
6 again, I think that a reasonable prudent person would  
7 stop to figure out what is going on.

8 Q. (By Mr. Puckett) Maybe so. But given the fact  
9 that John Kelley had not done anything wrong that night,  
10 isn't he within his legal rights as a citizen of the  
11 United States to keep walking down the sidewalk despite  
12 how many police show up and look at him?

13 MR. SOLOMON: Objection, form.

14 THE WITNESS: Legal, yes, sir.

15 Q. (By Mr. Puckett) And if the officers don't have  
16 reasonable suspicion that a crime occurred, the officers  
17 are not within their rights to either issue commands to  
18 him or to physically detain them; are they?

19 A. If they don't have reasonable suspicion to  
20 believe that he may have committed an offense, no, sir.

21 Q. You are going to ask me many times today to put  
22 myself in the officers' minds. But if you put yourself  
23 in John Kelley's mind, he had no reason to think that  
24 the officers were looking to arrest him or detain him  
25 that day because he hadn't done anything wrong; isn't

1 A. Three or four, maybe five times.

2 Q. Is that what happened here?

3           A. I don't remember exactly how many times they  
4 said it.

5 Q. Let's go back and watch the video. I am going  
6 to share my screen. We will look again at Exhibit 1002.  
7 This is Officer Dehkordi's body worn camera. When you  
8 take a close look at this for a few seconds here and  
9 count to yourself the number of times that Mr. Kelley is  
10 ordered to show his hands before Officer Dehkordi grabs  
11 him or attempts to tase him or tases him; right?

12 A. Yes, sir.

13 (Video playing.)

14 Q. (By Mr. Puckett) So how many times did you  
15 observe that Mr. Kelley was told to show his hands?

16 | A. By Officer Dehkordi, just that one time.

17 Q. One time. So that would not count as numerous;  
18 right?

19 A. No, sir.

20 Q. So the blue team report is not accurate when it  
21 says that after numerous commands to show his hands.  
22 That is not accurate; is it?

23 A. Did Officer Pierce tell him to show his hands?  
24 I don't remember.

25 Q. Did you hear it?

1 Q. Does this paragraph that we are looking at  
2 here, does it include facts that are sufficient to allow  
3 a reviewer to make those determinations about whether  
4 the commands could be heard and understood and/or  
5 whether the subject had an opportunity to comply?

6 A. It does not indicate that.

7 MR. SOLOMON: Objection, form.

8 Q. (By Mr. Puckett) Let's look at the next  
9 sentence there. Look at the next sentence there where  
10 it says the male tucked his hands under his chest. Do  
11 you see that?

12 A. Yes, sir.

13 Q. Is that an accurate statement? Did John Kelley  
14 ever tuck his hands under his chest?

15 A. I remember his arms being underneath him. But  
16 I think watching the video, they are actually closer to  
17 his face.

18 Q. I agree with you. So it is not accurate to say  
19 that the male tucked his hands under his chest. That is  
20 not an accurate description; is it?

21 A. No, sir. They were under him, yeah.

22 Q. In this summary that is provided here in the  
23 blue team report, it doesn't mention any attempts of  
24 deescalation that were used by the officers prior to  
25 attempting to tase John Kelley; does it?

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10                   REPORTER'S CERTIFICATE

11                   ORAL VIDEO DEPOSITION OF SERGEANT KYE KENNEDY

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13                   Reported Remotely

14     I, Sarah A. Prugh, Certified Shorthand Reporter in  
15     and for the State of Texas, hereby certify to the  
16     following:

17     That the witness, SERGEANT KYE KENNEDY, was duly  
18     sworn and that the transcript of the deposition is a  
19     true record of the testimony given by the witness;

20     That pursuant to FCRP Rule 30(f)(1), request to  
21     review the transcript was not made by either deponent or  
22     party before the deposition was completed.

23     That pursuant to information given to the deposition  
24     officer at the time said testimony was taken, the  
25     following includes all parties of record and the amount  
   of time used by each party at the time of the  
   deposition:

26     Mr. Donald Puckett (5h18m)  
27     Attorney for Plaintiff

Mr. David Solomon (0h0m)  
Attorney for Defendant

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of this action.

Certified to by me on this 3rd day of January, 2023.

Sarah A. Prey

Sarah A. Prugh, CSR  
Texas CSR 3972  
Expiration: 1/31/24  
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